IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 10637 OF 2004

RAJNIKANT HARILAL CHOKSHI ... PETITIONER

vs

MRS. MANIBEN H. THAKKAR .. RESPONDENT

Mr. S. B. Prabhavalkar for petitioner

Mr. P. K. Dhakephalkar with P. I. Vakil for Respondent

CORAM:-SMT. RANJANA DESAI, J.

DATED:-17-1-2005

P.C.

The petitioner is original defendant 2. The suit was filed by the respondent landlord on the ground of bonafide requirement, arrears of rent and unlawful subletting against defendant 1 company and defendant 2. According to the landlord, defendant 1 company had unlawfully sublet the

suit premises to defendant 2. The trial court decreed the suit partly i.e. on the ground of bonafide requirement and arrears of rent as against defendant 1 company. Suit against defendant 2 was dismissed by holding that he is a lawful sub-tenant and hence protected. Being aggrieved by the said judgment and decree the respondent landlord preferred an appeal in which she impleaded only defendant 2. The lower appellate court allowed the landlord's appeal. Being aggrieved by the said judgment and decree defendant 2 has filed the present writ petition.

2. Mr. Prabhavalkar, the learned counsel for defendant 2 submitted that the lower appellate court's finding that defendant 2 is not a protected licensee or a deemed tenant is perverse. He submitted that the impugned judgment and decree suffers from a patent illegality as defendant 1 company who was a necessary party had not been made a party to the appeal and hence the impugned judgment and decree needs to be set aside.

3. I am unable to accept the submissions of Mr. Prabhavalkar. It is significant to note that defendant 1 company and defendant 2 have filed their written statements separately. But both the written statements are signed and verified by defendant 2. The company's written statement is verified by him as the Secretary of the company. In the company's written

statement it is stated that defendant 2 was the company's employee and now he is the company's secretary and, therefore, he is entitled to occupy the suit premises for his residence. In his written statement defendant 2 has stated that defendant 1 company has let out the suit premises to him on monthly tenancy from 1-4-1960 and defendant 1 company has informed him that he should pay rent to the landlord. He has contended that he is in possession of the suit premises from 1-2-73 and has thus become a protected tenant.

4. These are undoubtedly inconsistent stands. Whereas in the company's written statement verified bydefendant 2 the stand is taken that defendant 2 is occupying the suit premises as the employee of defendant 1 company in his own written statement defendant 2 has stated that the company has sublet the suit premises to him. It is pertinent to note that defendant 2 resisted the suit onbehalf of the company and on his behalf. The suit premises were taken on rent by the company for the residence of its directors, officers and employees. All rent receipts are passed in favour of defendant 1 company. Defendant 2 has paid rent on behalf of the company. This finding appears to me to be unassailable.

5. So far as the grievance regarding non-impleadment of defendant 1 in the appeal is concerned, that also has no substance. It is pertinent to note that

the trial court had ordered defendant 1 to vacate and handover the possession of the suit premises. Defendant 1 did not challenge the said order. Suit was dismissed only as against defendant 2, therefore, non-impleadment of defendant 1 in the appeal cannot be called an illegality calling for interference by this court. Under the circumstances the petiton is rejected.

6. At this stage the learned counsel for the petitioner prays that operation of the present order be stayed. In the circumstances of the case, operation of the present order is stayed for a period of eight weeks on the petitioner filing an usual undertaking in this court in which he should state that if he does not get any favourable order from the Supreme Court, he will immediately handover vacant and unencumbered possession of the suit premises to the defendant. Undertaking to be filed within a week from today.

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